

C8RPUNI1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED SPINAL ASSOCIATION, a nonprofit organization, DISABLED
4 IN ACTION, a nonprofit organization,

5 Plaintiffs,

6 v.

10 CV 5653 (DAB)

7 BOARD OF ELECTIONS IN THE CITY
8 OF NEW YORK and JULIA DENT, in
9 her official capacity as
10 President of the Board of
11 Elections in the City of New
12 York,

13 Defendants.

-----x

14 New York, N.Y.
15 August 27, 2012
16 11:19 a.m.

17 Before:

18 HON. DEBORAH A. BATTS,

19 District Judge

20 APPEARANCES

21 DISABILITY RIGHTS ADVOCATES
22 Attorneys for Plaintiffs

23 JULIA M. PINOVER, ESQ.
24 STUART J. SEABORN, ESQ.

25 AND

CUTI HECKER WANG, LLP
Attorneys for Plaintiffs
MARIANN MEIER WANG, ESQ.

NEW YORK CITY LAW DEPARTMENT, OFFICES OF THE CORPORATION
COUNSEL

Attorneys for Defendants
STEPHEN E. KITZINGER, ESQ.

AND

BOARD OF ELECTIONS
Attorney for Defendants
STEVEN RICHMAN, ESQ., General Counsel
RAFAEL SAVINO, ESQ.

C8RPUNI1

(In open court)

(Case called)

THE COURT: Good morning. Please be seated. United Spinal Association versus the Board of Elections and Julia Dent. On behalf of the plaintiff, we have Miss Pinover. Good morning.

MS. PINOVER: Good morning, your Honor.

THE COURT: Mr. Seaborn.

MR. SEABORN: Good morning, your Honor.

THE COURT: Good morning. And Miss Wang --

MS. WANG: Good morning, your Honor.

THE COURT: -- as well. On behalf of the defendant, we have Mr. Kitzinger.

MR. KITZINGER: Good morning, your Honor.

THE COURT: Good morning, Mr. Kitzinger. Mr. Steven Richman.

MR. RICHMAN: Good morning, your Honor.

THE COURT: Good morning. And Mr. Rafael Savino.

MR. SAVINO: Good morning.

THE COURT: Good morning. How was your vacation, Mr. Kitzinger?

MR. KITZINGER: Unfortunately, interrupted. I'm -- Actually, I'm only here today in the city because of this hearing, but so far it's been good, and I hope it continues to be good.

C8RPUNI1

1 THE COURT: Well, I'm pleased to hear that you have
2 the ability to go back to your vacation, and I'm sorry that it
3 had to be interrupted, but I think this is a very good reason
4 to interrupt it. Have you had a chance to talk with
5 plaintiffs?

6 MR. KITZINGER: We did speak. We got your order on
7 the 15th. I believe I e-mailed Miss Pinover and Mr. Seaborn on
8 the afternoon of the 15th. We spoke on the -- to set up a time
9 to speak. We spoke on the 16th. I spoke with Mr. Seaborn on
10 the afternoon or evening of the 16th, evening our time,
11 afternoon Mr. Seaborn's time in California.

12 He told me -- gave me the background sketch of their
13 expected proposal, which they reduced to writing and sent to me
14 on the 17th, when I was already away on my vacation. And they
15 sent that to you on the 23rd. For obvious reasons, I didn't
16 respond to their written proposal because I was away.

17 I did forward it to my client. They had a chance to
18 review it. I had spoken with my client on a couple of
19 occasions prior to even receiving your Honor's order, saying
20 the parties needed to meet in order to schedule -- to discuss
21 possible proposed remedies, and we have some initial ideas and
22 things that the Board is intending to implement for the
23 September primary. And we're hoping to further refine and
24 develop a more complete remedial plans for the November general
25 election, but given the time constraints, your Honor entered

C8RPUNI1

1 the decision on the 8th of August.

2 We were in litigation in New York, in Bronx Supreme
3 Court on election matters in the First Department, and up to
4 the Court of Appeals where, unfortunately, the Court denied
5 leave on appeal. So we didn't have to reprint ballots or
6 change the ballots, or reprint them. But the Board is
7 furiously working to get the election ready to go two weeks
8 from Thursday.

9 Because right now, they're preparing to test all the
10 ballots and the machines to make sure the machines all function
11 properly and then get them sealed up, inspected -- available
12 for inspection, inspected, sealed and delivered to the poll
13 sites in time for the September 13th primary.

14 They have taken some additional steps including, for
15 the first time, the Board is assigning poll sites coordinators
16 to each poll site, even poll sites which only have a single
17 assembly district at them -- I mean election district contained
18 therein, which is a change in policy and practice from past
19 years.

20 That coordinator is to be instructed to walk the site
21 periodically to check for obstruction, missing signs, so on and
22 so forth. Normally it is done, but it's actually formalized
23 and scrutinized, and I believe pages are being added to
24 coordinator's journals to record these essentially walk-through
25 inspections.

C8RPUNI1

1 The Board is still reinspecting, resurveying every
2 poll site in the City of New York. They are moving toward the
3 goal of completing that, according to State law. I think it's
4 December 15th they have to resurvey all 1,400 poll sites and
5 replace those that are found to be not fully accessible.

6 I believe one of the poll sites is a barrier-free
7 living residence that was inspected and found to be
8 noncompliant, and we've notified that residence that they're
9 missing a handrail on a ramp. We're hopeful that that will be
10 rectified, and we'll be able to continue using that poll site
11 because barrier-free residences tend to serve as good poll
12 sites because, among others, those who live there are more
13 easily able to vote.

14 For the first time also for this election,
15 coordinators will be provided with additional signage at the
16 poll sites, more than is actually formally and specifically
17 needed. So, for example, if it's a windy day and signs blow
18 away or they're stolen, they should have replacement signs
19 available.

20 The Board of Elections also ordered new directional
21 arrows. The typical ones say "vote here" in one, two, three,
22 or four languages. They now added a fifth language, which is
23 Bengali. So now we have Bengali, Korean, Chinese, Spanish and
24 English in various poll sites. Spanish and English everywhere.
25 Chinese in parts of Brooklyn and Manhattan and Queens, Korean

C8RPUNI1

1 in parts of Queens, and Bengali in parts of Queens.

2 They've now ordered additional signs that are in blue
3 with the universal access sign. So instead of having just a
4 simple "vote here" arrow towards the main entrance, where the
5 accessible entrance is different, there will also be the
6 accessible arrows pointing directly to that accessible
7 entrance.

8 THE COURT: Let me just ask you on that,
9 Mr. Kitzinger. If the accessible entrance is not visible from
10 the main entrance, how will the individual at the main entrance
11 know where to go to get to the accessible entrance?

12 MR. KITZINGER: Well, that's what I'm saying. In
13 addition to the traditional "vote here" signs, the arrows, new
14 signs have been ordered. New signs have been ordered that say
15 "vote here" with the universal accessibility symbol printed on
16 it and with arrows, additional arrow signs in the accessible
17 blue with the universal sign of accessibility on it.

18 THE COURT: So it's pointing them to the path to get
19 to the accessible entrance?

20 MR. KITZINGER: Yes. Where it's different, it will
21 follow the path to the accessible entrance presumably from --
22 hopefully, from the main entrance, where it's different. So if
23 someone were to come up to, say, the courthouse and come up to
24 the Pearl Street entrance, you would have the accessibility
25 arrows pointing from there to the Worth Street entrance and

C8RPUNI1

1 following that path.

2 THE COURT: And then when you get to the Worth Street
3 entrance, would there be a sign that says also this is the
4 accessible entrance?

5 MR. KITZINGER: Yes, that's standard. That's always
6 been there.

7 THE COURT: Okay.

8 MR. KITZINGER: When it hasn't been removed or blown
9 away or tampered with.

10 THE COURT: What are they made out of?

11 MR. KITZINGER: I think it's a heavy duty paper. I
12 don't know if these are laminated or not. This was a volume
13 job on short notice. They're heavy stock paper. I think the
14 Board is trying to move, at least at sometime, to a laminated
15 sign.

16 THE COURT: That would be good. Then we don't have to
17 worry about the weather. You know what, Mr. Kitzynger, you are
18 a master at doing simultaneous translation. I see that
19 Mr. Richman is constantly talking to you and you are,
20 nevertheless, not stopping at all and giving it all to me.
21 Would it be easier for Mr. Richman to have an opportunity to
22 talk, and then I will get back to you, Mr. Kitzynger?

23 MR. KITZINGER: Sure. I mean, Mr. Richman was not on
24 vacation last week and has had more direct, face-to-face
25 contact with -- I mean, he's general counsel at the Board of

C8RPUNI1

1 Elections and had more direct and recent communications with
2 the principals at the Board.

3 MR. RICHMAN: Your Honor, at those sites that are in
4 public buildings, we've installed sleeves in which now a
5 plastic hard sign gets inserted to show that this is the
6 accessible entrance. Usually if there is no other devices, we
7 now have installed in each of those locations to put a bell to
8 ring so it will ring inside to let the door clerk know to open
9 the door, as well.

10 THE COURT: Yeah, but that doesn't always work.
11 Either the bell doesn't work or the person inside is not there.
12 I mean, that does have its issues, I understand.

13 MR. RICHMAN: Again, what we've tried to do is by
14 having them be battery operated, they are not installed and
15 delivered to the custodian supposedly it's to be limited to the
16 night before the election. So hopefully -- The battery is
17 supposed to be a 48-hour battery. We only have to be open 16
18 hours. We hope that will work. But, yes, your Honor, there
19 are occasional mistakes like that.

20 But, again, trying to deal with the idea of having
21 signs blown away or taken off, by putting them in a sleeve,
22 it's been a much better location.

23 I think by including the directional arrow, it will be
24 clearer to the voter who comes up who did not read to the
25 notice that goes to vote. The notice went out August 1st

C8RPUNI1

1 through 5th. If there's an accessible entrance that's
2 different from the main entrance, that's noted on the flyer.
3 We redesigned the flyer this year so that there's a tear-off.
4 So you can take off all your new voting information.

5 Since it was a redistricting year, every voter has
6 been assigned to a new election district and assembly district,
7 even if they're in the same poling site. We've given them
8 information that they can tear off and, hopefully, the voter
9 will have read the notice prior to September 13th or
10 November 6th, take the card with them and know how to go in and
11 be able to do that.

12 In addition, when you go onto the new website, on the
13 poll site locator, it says the accessible entrance, there's the
14 alternative, other than the main entrance. When you put in
15 your address and your poll site appears, that information
16 appears on the display as well. So hopefully, when the voter
17 gets to the poll site, they know where to go so that, in
18 Mr. Kitzinger's example, if they're being dropped off by
19 Access-a-Ride, they're being dropped off on the Worth Street
20 side, not the Pearl Street side so they don't have to negotiate
21 the distance. So we're trying to do as much as possible to get
22 information in advance to the voters.

23 In addition, we have also, for those sites that have
24 been deemed inaccessible in accordance with State law, notices
25 went out to those voters advising them that if they wish, they

C8RPUNI1

1 could have their registration record transferred for the
2 upcoming primary to a fully accessible site. As of Friday,
3 before we came here for another proceeding, we had gotten a
4 response of about a couple of dozen and that's all.

5 THE COURT: Who have been asked to be registered
6 someplace else?

7 MR. RICHMAN: Not be -- just change their registration
8 record. We needed that in before last Friday so when we print
9 the registration poll record, that will be included. So that
10 if this site is deemed to be not fully accessible, and the
11 Civil Court at 111 Centre is, you could have asked for that, if
12 you applied to the Board. You fill out the form. It comes
13 back in, your registration record gets transferred to that
14 election.

15 We're hoping, as Mr. Kitzinger said, that by the end
16 of December, we'll complete the surveys, and that for the 2013
17 cycle, every poll site, as required by State law, will be an
18 accessible site.

19 THE COURT: All right. Ms. Pinover, would you like to
20 respond, or Mr. Seaborn?

21 MR. SEABORN: Just a couple of things, your Honor.
22 Mr. Seaborn. We took your order very seriously. We pounded
23 the pavement. We talked to experts. We talked to CIDNY, who's
24 here in the audience, and who could speak, if necessary. We
25 haven't seen anything in terms of what defendants are talking

C8RPUNI1

1 about.

2 We put ourselves out there for them. They're
3 essentially trying to work in a vacuum and reinvent the wheel.
4 The poll site coordinator, that's something we put in our
5 proposal. Signage, it is an issue, but the folks at CIDNY have
6 ideas about how to fix it and how on-site poll site
7 coordinators can take care of it.

8 They haven't talked to us. They haven't shared
9 information with us. Why do they have to reinvent the wheel
10 when CIDNY experts and others have opined already?

11 THE COURT: Well, I hear what you're saying, but are
12 you responding that what they have proposed is not adequate?

13 MR. SEABORN: They haven't shown us anything. This is
14 the first time we've heard about anything with the signage.
15 This is the first time we're hearing about some of these
16 changes to the poll sites.

17 Your order was essentially for us to meet and confer,
18 tell the parties to get together. There's no need to re-invent
19 the wheel. CIDNY has done surveys for eight years. We
20 recognize defendants are doing some surveys. Why not put
21 everything together? There's a very short period of time
22 between now and November.

23 CIDNY can train their poll site coordinators. It
24 sounds like there is going to be a poll site coordinator at
25 each poll site. Why not work to get -- They've essentially

C8RPUNI1

1 kept us in the dark. And these are Mr. Richman's proposals.
2 They could have been shared with us earlier.

3 We're now approaching September. You know, the
4 primary is coming up and the November election is coming up.
5 It's almost a shock to us that we're hearing about these
6 changes. We haven't heard about them before.

7 THE COURT: Well, I understand, but what I would like
8 to do is, instead of having a territorial discussion here, now
9 that you hear that they are making and have made some changes,
10 even though you have not had an opportunity to see them, are
11 you suggesting that, as described, it is still unacceptable?

12 MR. SEABORN: It's minimal. I mean, the thing with
13 the sleeve and the signage, that's a start. They're notifying
14 people that they're at an accessible poll site, that's a start.
15 There are many more inaccessible poll sites than the Board
16 actually knows about. That's something that was in our 56.1
17 statement. That's something that you commented on in the
18 order.

19 Not all those folks can be notified. So certain
20 things need to be done that are different than what they're
21 doing. Why not gather the folks together. Why not gather the
22 folks at CIDNY that have done surveys for eight years and put
23 their heads together and come up with a solution? We proposed
24 something. We'd like CIDNY to train their poll site
25 coordinators for this election.

C8RPUNI1

1 For the future, it could be some third party. It
2 could be CIDNY. It could be somebody else, as long as that
3 person has expertise. But for November, we need to put our
4 heads together. There's limited time. There are incredible
5 amounts of barriers that have been documented, and I'm not
6 hearing enough to communicate that something is going to be
7 done about it.

8 THE COURT: Well, it isn't helpful to me, Mr. Seaborn,
9 to start out with, well, they're not doing what we told them to
10 do and how we want it done, and I don't know what they're
11 talking about.

12 Would it be helpful for you all to have an opportunity
13 to talk to each other and figure out, based on what the Board
14 of Elections says it is prepared to do or is doing, using that
15 as a starting place to see what additional things CIDNY can do
16 to help them to reach even further, either very near term for
17 September 13th or certainly by the general election in
18 November, to maximize the opportunities of individuals who are
19 disabled to vote? They have ideas. You have ideas. Do you
20 think you all should talk?

21 MR. SEABORN: Absolutely. We've tried to talk, and
22 we're certainly open to doing so today and any time in the near
23 future before the election. We actually brought Monica Barkley
24 from CIDNY today. She can talk about what CIDNY is prepared to
25 do. I think it's actually a great idea.

C8RPUNI1

1 THE COURT: I think it's in her affidavit what they
2 are able and willing to do.

3 MR. SEABORN: Yes.

4 THE COURT: And I think it is a really, what I call,
5 if you will, Bert-and-Ernie cooperation that the parties are
6 willing to work together. Certainly, the plaintiff is willing
7 to work with the Board of Elections.

8 Now, I could say to you, since this is the first time
9 you're hearing things and this is the first time I'm hearing
10 things and the Board of Elections has not had an opportunity to
11 reduce this to writing, that it might make sense to have an
12 opportunity to talk.

13 Now, I know, Mr. Kitzinger, you're going away.
14 Mr. Richman, are you willing to take on the responsibility of
15 working with the plaintiffs during Mr. Kitzinger's remaining
16 vacation so that you all can see really how far apart you are
17 before you come back and talk to me?

18 MR. KITZINGER: Your Honor, I have to strenuously
19 object to that because what -- Mr. Richman is counsel and is
20 very familiar with the board. I am counsel of record. Michael
21 Cardozo, Corporation Counsel, is counsel of record and I'm one
22 of his assistants.

23 I am the designated individual, and the Corporation
24 Counsel is designated by city charter to represent -- and only
25 the Corporation Counsel and his or her assistants are

C8RPUNI1

1 authorized to represent the Board of Elections in litigation
2 matters without a special designation which, unfortunately,
3 Mr. Richman does not have.

4 And it would seem inappropriate to have the client
5 speaking directly with counsel for plaintiffs. Moreover, it's
6 the Board's position that, at this point in time, the Court
7 should enter an order directing no more --

8 THE COURT: You're not -- Don't even finish the
9 sentence. That's not happening. Okay? That is not happening.
10 I should order no more based on the oral representations made
11 to me this morning? It's not happening.

12 MR. KITZINGER: Your Honor, what I was going to say,
13 is no more than for the Board to develop and implement a plan,
14 a remedial plan pursuant to Schwartz v. Dolan, and Dean v.
15 Coughlin. Schwartz v. Dolan is 86 F3d 315 and Dean v. Coughlin
16 is 804 F2d 207, which recognize that there's a federal issue at
17 play here that where a deficient -- constitutional deficiency
18 has been found by the Court, the Court -- and the
19 constitutional deficiency by a state or local government, the
20 Court should order that governmental entity to develop and
21 implement a plan in the first instance, and only when the --
22 that entity fails to do so or presents a plan that is facially
23 infeasible, should the Court go further and implement specific
24 directions.

25 THE COURT: Well, let me put it to you this way. If

C8RPUNI1

1 we were talking about 2010 or 2011, that would probably be very
2 effective and the way to go. But we do have somewhat of a time
3 crunch here, and I cannot help but notice that we do have a
4 Presidential election coming up in November.

5 Now, are you telling me that I can't tell you to do
6 anything other than what you want to do in terms of the general
7 election?

8 MR. KITZINGER: No. What I'm saying is, I think in
9 the first instance, the order should be to direct the Board to
10 develop a plan to present to the Court, and we are in the
11 process of doing that. We've been doing that. I had -- We got
12 your order on the 8th of August.

13 I met with the commissioner of elections the very next
14 meeting, which was on the 14th. I had additional meetings with
15 the executive committee by telephone and in person. The
16 executive committee consists of the president --

17 THE COURT: I don't really care who's on the executive
18 committee right now. I don't think I need to know that. What
19 I'm asking you is, what are you saying, that I really can't do
20 anything other than tell you to develop the plan and good bye
21 and hope it works in November?

22 MR. KITZINGER: No, your Honor. First of all, to be
23 clear, many of the things that Mr. Richman referred to,
24 including sending out the letters, the voter information
25 notices, identifying the accessible entrance have all been done

C8RPUNI1

1 in the past.

2 THE COURT: And they have been done in the past, but
3 the problem is, is that there are situations that developed
4 during the day at those poling sites that weren't there
5 necessarily at the beginning of the day, but nevertheless,
6 because people who are disadvantaged, are not told show up to
7 vote only during this 15-minute period that we can guarantee
8 that you'll be able to get in.

9 I mean, they have a right, as everybody else, to be
10 able to go during the poll hours to vote. You know that things
11 don't always work out, and by the time they're discovered to be
12 a problem, the remedy is not necessarily at hand. And,
13 therefore, those individuals who are at that poling place don't
14 have the opportunity to vote.

15 Now, I'm not saying you've never done anything.
16 Please don't think I'm saying that, but what I am saying, all
17 of these things are not new to me because they were part of the
18 papers that were submitted to the Court when I ruled on the
19 motion for partial summary judgment.

20 So I understand that there are problems that can
21 develop during the day, which is why having somebody there
22 devoted to, dedicated to dealing with those problems at each
23 poling site with the ability to have things taken care of
24 immediately, for instance, if the bell isn't ringing, to be
25 able to have somebody there to make sure that people can still

C8RPUNI1

1 let it be known that they need to have access. That is, you
2 know, keep the door open.

3 I mean, you see, there are so many different things
4 that could be a problem. For instance, there could be a fire
5 hazard in having a door propped open because the bell isn't
6 working. But there are things that you can't solve unless
7 somebody is there, ready and educated and knowing what to do
8 with that particular problem. Is that what you're saying
9 you're going to have?

10 MR. KITZINGER: Yes, the poll site coordinator.

11 THE COURT: But coordinator means they're doing other
12 things, right? This isn't the disabled coordinator. This is a
13 general coordinator?

14 MR. KITZINGER: This is a person who's in charge of --

15 THE COURT: No, no. Answer my question.

16 MR. KITZINGER: Correct.

17 THE COURT: Is this someone dedicated only to making
18 sure that the disabled individuals who are coming to that
19 particular site are going to be able to vote?

20 MR. KITZINGER: No, it is not.

21 THE COURT: Okay. That is my point. That is my
22 problem because this person is charged with doing a whole lot
23 of other things, your coordinators. I know about the
24 coordinators. Their jobs are many, are challenging and they
25 have to deal with everything, including machines that don't

C8RPUNI1

1 work, including a whole lot of other things. And, therefore,
2 to add this to their list has not been effective in the past,
3 and I don't understand why you think it would be now.

4 MR. KITZINGER: Well, this is something that is now
5 explicit, that they have to walk the site periodically. It's
6 now pages have been added to the coordinator journal, which
7 they're supposed to fill out and complete after each election.

8 THE COURT: No, no, I understand, and I'm not --

9 MR. KITZINGER: Your Honor, very candidly, there's no
10 way that the Board will be able to recruit and train an
11 additional 1,400 individuals or fund an additional 1,400 --

12 THE COURT: Well, the funding is not my problem. It
13 is your problem, but the point that you don't have the money
14 isn't a reason for me to say, well, you don't have to do it.

15 MR. KITZINGER: We couldn't possibly, between now and
16 September 13th or even really November, recruit an additional
17 1,400-plus poll workers to serve as accessibility coordinators
18 at every poll site.

19 THE COURT: Well, maybe you could get some help doing
20 that. Maybe the plaintiffs are able to provide you some
21 assistance to help you take care of that so that, working
22 together, we wind up with a situation where we have truly
23 minimized the difficulty of the disabled, disadvantaged to be
24 able to vote. And, you know, if it's a stop-gap measure,
25 because we're talking about weeks or months as opposed to a

C8RPUNI1

1 permanent fixture, it's a start.

2 MR. KITZINGER: Your Honor, I would just also
3 reiterate that what I've already referred to are things that
4 the Board is doing and planning to do for the September
5 primary, not even the November general.

6 We are working -- the Board is working diligently to
7 implement new things for the September primary, which is in a
8 little over two weeks, and then to do additional things for --
9 to pilot additional ideas for the general time.

10 THE COURT: All right. Then, this is a problem. You
11 know, you deserve your vacation, Mr. Kitzinger. I am not
12 suggesting you don't, but the timing of this -- When is your
13 vacation over?

14 MR. KITZINGER: I am scheduled to return to the office
15 the day after Labor Day. I'm supposed to be out the remainder
16 of this week.

17 AUDIENCE MEMBER: That's the 4th.

18 THE COURT: Well, I must say that I applaud the Board
19 of Elections' efforts to make changes and make improvements as
20 early as the September primary, but I do believe, if I'm not
21 mistaken, that the focus of the plaintiffs this year is really
22 the general election.

23 MR. KITZINGER: Well, your Honor, but one of the
24 benefits of taking steps now --

25 THE COURT: No, no.

C8RPUNI1

1 MR. KITZINGER: -- is we'll see if they work and get
2 an idea and maybe develop additional things, including -- one
3 of the things that the Board is doing is they've purchased, I
4 believe, it's 20 tablet computers with cameras and wireless
5 capability, which will be distributed to the pilot group of AD
6 monitors or executive office monitor teams, and they will be
7 going to the poll sites and videotaping.

8 Their plan is to videotape from the time they get out
9 of the vehicle, into the poll sites, take images of the poll
10 sites itself, setup. They will be able to do the surveys,
11 their reports right on the tablet computer, send in wirelessly
12 any reporting of any problems. So you'll get an essentially,
13 hopefully, an immediate dispatch of someone to resolve the
14 problem. They'll also be --

15 THE COURT: Let me just stop you right there. Haven't
16 we been there and done that in the past? Hasn't there been
17 somebody to report a problem, but then nothing was done about
18 it?

19 MR. KITZINGER: Your Honor, in the past, problems get
20 called in mostly anonymously and --

21 THE COURT: What do you mean anonymously? They don't
22 tell you which polling place the problem is?

23 MR. KITZINGER: No. They call in. There's no way to
24 follow up with the individual who called in the alleged
25 problem. If your Honor were to go to a poll site and notice

C8RPUNI1

1 something, call it in, you may or may not give your name or --

2 THE COURT: But what is the purpose of my name? I
3 don't understand. Are you saying people are just like pulling
4 a false alarm?

5 MR. KITZINGER: No. Because if we get to the site and
6 we don't see the problem, it may be remedied already. We may
7 not be able to identify what the problem is. It may not be
8 clear once someone from the Board is there, and it would be
9 easier to follow up to get name and contact information, just
10 get additional information to find out exactly what the problem
11 was.

12 THE COURT: You mean when somebody calls in, they're
13 not asked these questions?

14 MR. KITZINGER: They are, but they don't always give
15 the information.

16 THE COURT: On how many times have people called in
17 and not given that information?

18 MR. KITZINGER: I don't have the statistics.

19 THE COURT: That may happen. If it doesn't happen all
20 the time, then that is -- I mean, I don't understand why you're
21 telling me that sometimes people don't identify themselves as a
22 basis for me to say, well, you don't have to worry about people
23 calling in anonymously. I don't understand where you're going
24 with this.

25 MR. KITZINGER: I'm not at all saying that. What I'm

C8RPUNI1

1 saying is this new program that the Board is piloting, you'll
2 have -- be able to track -- you'll have to check in at the poll
3 site wirelessly just by using a GPS; so you can tell when they
4 arrived, when they leave the poll site.

5 They'll have video of the route into the poll site,
6 into the poll room. They'll be able to record, and where
7 appropriate, resolve -- mark issues that have been resolved.
8 This will be immediately in a computer system; so it will be
9 more easily traceable and less likely to get lost.

10 Another problem we had --

11 THE COURT: Wait. Where are you going with this? Are
12 you saying this eliminates which problem that I've been talking
13 about? How many people are going to have these, 20? How many
14 polling places do we have?

15 MR. KITZINGER: We have approximately 1,400 poll
16 sites, but your Honor, the reason -- the vendor that is
17 programming it and we're working with, actually only wanted us
18 to use ten in the initial pilot, but we insisted there be 20.
19 And they're trying to roll it out for the November general, and
20 eventually it will be rolled out on a, hopefully, much broader
21 basis to each AD monitoring team so that their reports will
22 then be electronic, will be wirelessly transmitted. You'll
23 have video. You'll have the GPS reports that says when --

24 THE COURT: I think all of that is wonderful. I am
25 not knocking that in any way, shape or form. I actually think

C8RPUNI1

1 that anything that could be of assistance is great, but how
2 does that deal with the problem at another poll site where
3 individuals are not able to vote and no one is able to remedy
4 it?

5 MR. KITZINGER: Your Honor, the coordinators are being
6 instructed now formally to walk the site and report in their
7 coordinator journals the results of their inspection and to
8 clear any obstruction.

9 THE COURT: But we're going in circles here,
10 Mr. Kitzynger. They have a whole lot of things to do, these
11 coordinators, right?

12 MR. KITZINGER: Yes.

13 THE COURT: You're not just responsible for this. If
14 when somebody leaves, something happens to the accessible
15 entrance, and they've already made a tour of that area, and it
16 would include before, but right away there's a problem with it
17 when they're doing all the other things they have to do,
18 meanwhile, that accessible entrance is not accessible. Even
19 though at the time that they saw it, it was, and, therefore,
20 they didn't think that there was a problem. And then they have
21 to go and take care of their other things.

22 On the other hand, if there's somebody there, who was
23 trained and dedicated to making sure that not only is the
24 accessible entrance truly accessible but that everyone who is
25 coming in is able to not only enter, vote and leave, and that's

C8RPUNI1

1 all that they're in charge of, there is a much smaller chance
2 that there's going to be a problem at that poll site during the
3 period of time that the voting is going on for anyone who is
4 disabled.

5 MR. KITZINGER: Your Honor, where there's a door clerk
6 at the accessible entrance, that door clerk is instructed and
7 trained to take the necessary steps to make sure the entrance
8 remained accessible at all times, but even if you were --

9 THE COURT: There have been instances, I believe,
10 where the door clerk went to the bathroom, where the door clerk
11 didn't show up, where the door clerk was asked to do something
12 else.

13 You're talking about a dedicated door clerk. You're
14 going to give me a dedicated door clerk, who does nothing but
15 make sure that the doors are open and accessible, but yet, we
16 can't have somebody who has more expanded responsibility? Once
17 you take that door clerk away from the door, what's going to
18 happen?

19 MR. KITZINGER: The door clerk is not supposed to
20 leave without having somebody else there.

21 THE COURT: Yeah, but you know that isn't what
22 happens.

23 MR. KITZINGER: Your Honor, that's a fundamental -- If
24 you look at what the Board is doing, they're posting 1,400
25 individual events on a single day, using temporary staff and

C8RPUNI1

1 there's -- in locations they neither own, operate nor otherwise
2 control.

3 THE COURT: Beautifully put in a nutshell. I know
4 what your problem is.

5 MR. KITZINGER: And, therefore, yes, there will always
6 be problems and isolated problems, no matter what we do, no
7 matter what the Board --

8 THE COURT: I guess that the problem I'm having is I'm
9 not so sure they're isolated. If you're telling me at the last
10 election there were only five to ten instances, I think you'd
11 be perhaps on stronger ground, but I think that there were more
12 than that.

13 MR. KITZINGER: Your Honor, with regard to the reports
14 to the call center, historically, the Board has not done a good
15 job of closing out the reports once the problem has been
16 remedied. The absence of a report closure does not necessarily
17 mean it was not resolved. The board has updated the software
18 and gotten a new call center software, which also includes TTY.
19 I think it's now TTY service, which should also help.

20 But there will always be problems. That's a fact of
21 life. The idea and the goal of the Board is to minimize the
22 problems, both in nature and scope and time, because things
23 will always occur.

24 If somebody doesn't -- If a door clerk fails to show
25 at 5:30 in the morning, 5:00 in the morning, when it's time for

C8RPUNI1

1 them to show up, the coordinator is supposed to call in and get
2 someone sent from the standby pool.

3 Now, depending on where that poll site is, it may take
4 a little longer to get there or a little less time to get
5 there, but the Board does and always has maintained a standby
6 pool of poll workers.

7 You're dealing with -- If the Board had its druthers,
8 it could build 1,400 poll sites and maintain them and operate
9 and open them and control them year-round. That's just not
10 something that's possible. We're in a city that's very
11 condensed, very high population density, a lot of older
12 facilities. A lot of people do not want poll sites in their
13 private facilities because they don't want people coming in,
14 basically, at all hours of the day.

15 THE COURT: Not all hours of the day. You can't vote
16 all hours of the day.

17 MR. KITZINGER: Your Honor, the poll sites are
18 officially open from 6:00 a.m. to 9:00 p.m., for 16 hours. If
19 you're in the poll site at 9:00 p.m. -- at 8:59, you can stay
20 until you vote, which if people show up late, it can run late.
21 We've seen lines all around the country where people show up.

22 Moreover, to set up the poll sites, people start
23 coming from 5:00 in the morning. They don't always close it
24 down until well into the night because if people are there
25 voting until 9:30 or 10:00, you can't shut down the machines

C8RPUNI1

1 and start closing everything up until the last person has voted
2 and out of the poll site, which the whole voting procedure can
3 take over an hour, easily.

4 So you're really talking from 5:00 a.m. until 11:00 at
5 night. So you're talking about 18 hours where you're going to
6 have people in your building.

7 THE COURT: Don't they get paid for it?

8 MR. KITZINGER: The building operators do not get a
9 huge amount of money, but they have security concerns. They
10 don't want people in their building. In the past year, we have
11 had to go into State Supreme Court and sue building operators
12 and owners who were trying to block us from using the properly
13 designated sites.

14 It's getting harder and harder. Everyone is concerned
15 about terrorism or theft or other problems, and no one seems to
16 have this desire to support democracy that they used to have.
17 The Board uses schools where available, then other public
18 buildings, and then buildings that have tax exemptions or other
19 tax benefits because they have a legal right to use those
20 buildings under the election law. And but purely private
21 buildings with no tax benefits can simply say no. Because if a
22 building with a tax benefit blocks the board, the building can
23 sue to have the tax benefit revoked.

24 (Continued on next page)

25

C8RZUNI2

1 THE COURT: Well, aren't there a whole lot of tax
2 deals to encourage people to develop in New York that have been
3 done, so that practically every building in New York that's
4 younger than I am has some sort of those very tax benefits that
5 they could be held responsible for?

6 MR. KITZINGER: No. And the other problem is not all
7 the -- a lot of the buildings don't have the space, whether it
8 be in the lobby or community room, to run a poll site.

9 THE COURT: Okay.

10 MR. KITZINGER: For a single poll site you need about
11 400 square feet of space.

12 THE COURT: Okay.

13 MR. KITZINGER: So it becomes difficult to necessarily
14 locate and identify and secure these sites. And that is
15 what -- the Board goes out all the time looking for replacement
16 sites.

17 THE COURT: Okay. Let me hear from Mr. Seaborn.

18 MR. SEABORN: So, your Honor, we haven't seen evidence
19 in the record that the Board is actually doing this with the
20 frequency that Mr. Kitzynger is mentioning. Cities throughout
21 the country, there's a settlement in Philadelphia, we might
22 have referenced it in the letter, it's an older city, as well,
23 identifying alternate access issue poll sites as part of the
24 plan. We recognize that part of would take a long time and
25 that's why we proposed a five year timeframe.

C8RZUNI2

1 But I also wanted to jump back to your comment. We
2 have an entity think that is trained, has expertise, and has
3 made itself available to do the kinds of things that we're all
4 accepting are difficult, and we certainly view that as a
5 cooperative relationship. But what we like is some sort of
6 formalization of that cooperation. We haven't gotten that from
7 the Board so far. CIDNY could train folks. They could do
8 outreach to get people to be these on-site coordinators. We
9 don't have the cooperation or something formal to get it done
10 in terms of having them cooperate with the Board to do so, and
11 that's what we're asking for today.

12 MR. KITZINGER: Your Honor, with regard to CIDNY, it's
13 very very uncomfortable because they're the on-site PAVA
14 coordinator. They've been a coordinator, they've had contracts
15 with the Board of Elections, provided training, the very
16 training that plaintiffs now claim is insufficient.

17 Moreover, they're sort of the eminent per se behind
18 this lawsuit on the plaintiff's site. They provided all the
19 data to plaintiffs. I didn't get much in response to discovery
20 demand and subpoena for information from CIDNY about
21 communications regarding this litigation. But to suggest that
22 now, after they've done the Board's training, prepared the
23 materials, trained the trainers, to suggest that they should
24 come in and get paid additional monies --

25 THE COURT: We're not talking about payment yet.

C8RZUNI2

1 MR. KITZINGER: Well, plaintiffs made it clear they
2 want CIDNY to be paid, and for a long term contract, it's
3 really, it would seem to be inappropriate at best, since that's
4 the very entity that's been doing the training that plaintiffs
5 complain is wholly insufficient.

6 THE COURT: Okay, that's an interesting point.

7 Mr. Seaborn, would you like to address that?

8 MR. SEABORN: Certainly. We've not claimed that
9 CIDNY's training on its own is insufficient. What we're
10 alleging is --

11 THE COURT: Is sufficient or insufficient?

12 MR. SEABORN: We're not claiming it's insufficient.
13 Their training materials are based on the DOJ poll site
14 accessibility checklist. They actually prepared a checklist.
15 This is something they prepared about a year ago, but it's
16 something that could easily be revamped for this election.
17 This is an on-site coordinator checklist. It's a lot easier
18 than the surveyor check list that takes -- that takes a full
19 day's worth of training.

20 But the problem we've had with the Board of Elections
21 and CIDNY's training is not enough folks were trained in a
22 timely way. It took years for this to happen, and certainly we
23 recognize that in the papers we received in their 56.1
24 statement. There are folks, I think there were 28 coordinators
25 who were trained by CIDNY. We think that's a good start. But

C8RZUNI2

1 it's not something that's happened -- this is something that
2 kind of happened overnight. We think it's probably happened as
3 a result of litigation. So we're not -- we have no beef with
4 CIDNY's training whatsoever.

5 In terms of a long-term solution, it doesn't have to
6 be CIDNY. That's not our client. We're looking at a November
7 election, and that's the only entity with expertise we can see
8 in the city.

9 MR. KITZINGER: Your Honor, they do not train any AD
10 monitors or executive office monitor teams. They train
11 trainers, who then train the 30,000 poll workers. They did
12 train the surveyors and certify the surveyors, and that was
13 about 25, I believe about 25 surveyors they've trained and
14 certified, but they at no time trained AD monitors or general
15 office monitors.

16 MR. SEABORN: Your Honor, that's one thing that they
17 maybe they should have done. Training the trainers -- it's
18 like playing telephone. You train somebody, that next person
19 might not give everything that person got to the next person.
20 So it's not -- we have no beef at all with the scope or the
21 content of the training. It's really how many people were
22 trained and how many people they have on-site paying attention
23 to this.

24 MR. KITZINGER: Your Honor, the Board of Elections
25 trained 36,000 poll workers this year. I seriously question

C8RZUNI2

1 whether or not CIDNY has the staff to train 36,000 people each
2 year on accessibility issues. That is why the Board has it set
3 up where CIDNY comes in and trains the trainers and then the
4 trainers go out and train the 30,000 poll workers using the
5 materials developed and prepared by CIDNY. I mean, the only
6 difference is if CIDNY were to train trainers and then have
7 them come in, or CIDNY prepares trainers the Board hires and
8 those trainers, and the Board had trainers for accessibility
9 issues as well as all of the other election day operation
10 issues.

11 THE COURT: Do the CIDNY trained BOE trainer
12 individuals then go and train the coordinators?

13 MR. KITZINGER: Yes. And the selection inspectors and
14 the interpreters and the door clerks, all 36,000 poll workers
15 are to get trained, so. That --

16 THE COURT: All 36,000 get trained in terms of the
17 need for the disabled?

18 MR. KITZINGER: Yes, yes.

19 MR. SEABORN: Your Honor, we haven't seen evidence of
20 that in the record.

21 And also we're talking about 1400 poll sites. CIDNY
22 could hold trainings in, say, each of the five boroughs, train
23 as many people as you can. Each of those people that gets
24 trained becomes a poll site coordinator. It's not perfection.
25 It's not something -- maybe there won't be a trained poll site

C8RZUNI2

1 coordinator at every site, but there will be something much
2 more than we have now, and we don't have that much time before
3 November.

4 THE COURT: All right. There are 1400 polling places.

5 MR. KITZINGER: Approximately.

6 THE COURT: Approximately. How many have had problems
7 at the polling site during the day of voting more than twice or
8 three times?

9 MR. KITZINGER: Accessibility problems? I don't have
10 numbers on neighbor that. Maybe Mr. Seaborn does.

11 MR. SEABORN: We have -- the numbers indicate that
12 about 70 percent of the poll sites have at least one
13 accessibility problem. In terms of more than once, we don't
14 have those numbers as well.

15 MR. KITZINGER: That's --

16 MR. SEABORN: We're just looking at the surveys.

17 MR. KITZINGER: And that's extrapolating two of the
18 five boroughs. They've done no surveying in the Bronx or
19 Staten Island. Staten Island is different because it's a much
20 more car centric borough and has different set ups.

21 MR. SEABORN: And, your Honor, there could be some
22 margin of error. This is -- these are random samples so we
23 have to take it with a grain of salt. But it's year after
24 year, eight years of surveys indicate 70 percent year after
25 year have a variance.

C8RZUNI2

1 MR. KITZINGER: And, your Honor, some of those are
2 structural problems which the Board is working to resolve. The
3 Board is having ramps built at two schools, which are currently
4 inaccessible. They're undertaking efforts. They're spending
5 grant money dedicated to the Board for accessibility issues,
6 among other things. To --

7 THE COURT: Well, dedicated to the Board for
8 accessibility issues among other things. How much of it went
9 to the accessibility issues?

10 MR. RICHMAN: Your Honor, there were two types of
11 grants. There was federal monies for temporary improvements.
12 That paid for the improved signage. And I disagree with Mr.
13 Seaborn. If CIDNY did share with me information, they know
14 since the HAVA monies came in, the installation of door bells,
15 the permanent signage has all been discussed openly and
16 publicly at board meetings, testimony before the city and state
17 legislative bodies. CIDNY's been in the attendance. These are
18 all pooled together. And that's been using the temporary
19 monies, as well as cones, portable ramps, et cetera.

20 There's a state grant program as well which makes
21 permanent improvements. Requirement for that is that we have
22 to be able to use the poll site for at least five years. So
23 the Board made a conscious decision to invest that money in New
24 York City public school sites that are public sites, public --
25 that are poll sites, since by law we will always, I believe,

C8RZUNI2

1 have the right to use that as a site, and so we've done
2 everything from building ramps to at least in one instance
3 building an elevator, so that we're doing that. Now is there
4 enough money there? Initially, no, but we have -- in the
5 pipeline I believe it's a total of 78 or 80 sites that are
6 getting permanent improvements. These are all at public school
7 buildings throughout the city.

8 And the other issue I want to bring to the Judge's
9 attention is the concern we have for poll workers generally.
10 We need, for November's election, 36,000 poll workers. If
11 anything is in the past an indication, we'll get about 26,000
12 to show up. We have a gap. We do not have enough standbys, we
13 do not have enough poll workers. We've asked every civic group
14 to continue to recruit. But in order to meet the requirement,
15 you just can't come in and be a poll worker. You have to
16 attend the training class, you have to pass the test. Several
17 hundred people at least in the last cycle for the presidential
18 primary and the June federal primary were unable to pass the
19 open book test. They were not allowed to work. I don't think
20 you're asking us to put people into the poll sites to serve the
21 voters who are not trained.

22 But the idea of adding additional staff -- part of the
23 problem we have is we don't have enough to begin with. If we
24 add another 1400, I don't believe we'll be able to recruit
25 those people. And if anybody's willing now, we have openings.

C8RZUNI2

1 You do not have to come through the political party process as
2 to expected to fill the positions of door clerk, information
3 clerk, standby worker. You can just apply and if you meet the
4 requirements, age 18, registered voter, take the class and pass
5 the test, you're going to be assigned on election day. I can
6 guarantee that. Because there is no doubt in my mind that
7 we're going to have seven to 10,000 vacancies. We don't have a
8 standby pool that big now. So if CIDNY has people who want to
9 work, we can put them to work on election day beginning
10 September 13th. Even though not every poll site will be open,
11 I guarantee you that there will be need for poll workers.

12 So the idea that we have to now in some way contract
13 with them to reach out, that's not the right attitude. The
14 attitude from every other civic group Citizen's Union, League
15 of Women Voters is engage with us along with recruiting poll
16 workers. We do not have the authority, your Honor, to draft
17 people. We have suggested to the state that we be allowed, if
18 you work as a poll worker for two elections in a given year,
19 you get an exemption from jury duty. Then Chief Administrator
20 Judge, now the Chief Judge, has told me where I could take that
21 idea. Judge Litman is very concerned about that. But \$200 a
22 day, and we're paying higher salaries of any poll worker
23 anywhere in the State of New York for an 18 hour day, does not
24 exactly engender that as an -- even in the current economy,
25 we're not overwhelmed with applicants. And so that's something

C8RZUNI2

1 that we've been looking for.

2 Your Honor, I want you to be aware that to assign a
3 poll worker to a specific function -- to recruit them is a
4 difficult problem initially. That's why all of our poll
5 workers are trained and multi-tasked. The coordinator has a
6 full range of responsibilities. But the same thing is the
7 process has to be done in a lawful manner. We don't want to
8 deny anybody the right to vote, but also there still has to be
9 that accountability. And Mr. Kitzinger said at the beginning
10 of the day, yes, you got to get the equipment set up, you got
11 to account for your ballots because at the end of the day you
12 want to account for those ballots too. It's not good as a
13 matter of election administration to have unaccountable or
14 floating ballots out there at the end of the day. That raises
15 questions of integrity. That's why we're having the poll
16 workers trained throughout. We've gone to a six hour training
17 class. CIDNY provided us with the detailed materials. The
18 manual is there. It's in the short guide, in the long guide in
19 terms of accessibility issues. We are very cognizant of our
20 obligations to try to fulfill all the responsibilities. And it
21 not only applies to door clerks, it applies to foreign language
22 interpreters --

23 THE COURT: I know. I'm just looking at one narrow
24 aspect of the problem that you have to deal with generally. I
25 understand that, but it's my narrow aspect, and it's the one

C8RZUNI2

1 that I have the jurisdiction to rule on. And I do appreciate
2 that you do have other problems and other issues you have to
3 deal with. But it's not clear to me that there isn't some way
4 that CIDNY can be of more assistance near term, as well as long
5 term that would make it easier for you, as opposed to just
6 shouldering all of this on your own. And that's why I am
7 thinking that there has to be more coordination, more
8 cooperation, more interaction, and a cooperative attitude and
9 spirit, and I'm just not exactly sure how best to guarantee
10 that.

11 MR. RICHMAN: Your Honor, I understand that. I think
12 the problem we have is that, for example, in doing training --
13 the reason we train between 180 and 200 adjunct trainers is
14 because we do the training through the city. We try to make it
15 as easy as possible for the poll workers. It is not a central
16 location in each borough. We are using public schools, church
17 halls. We're doing -- trying to get the sites to doing two
18 classes a day since it's a six hour class beginning 10:00 a.m.,
19 and then an evening session beginning at 5:00 so that we can
20 try to get people in after work as well. We're doing it on
21 weekends. The idea that CIDNY would have the capability to
22 simultaneously train 150 classes at the same time, we know that
23 doesn't exist. Because they don't have the resources now and
24 they've told us that.

25 So the idea that we have the idea to do a schedule,

C8RZUNI2

1 one in each borough, that's not -- going to be literally a drop
2 in the bucket. What we need is that's why we developed the
3 plan to have CIDNY train the adjunct trainers and then, yes, it
4 is a telephone chain, but that's the only way to reach out and
5 try to get to 30,000 plus people who go to the classes, because
6 otherwise we can't do it. And, again we're doing this in a
7 very narrow timeframe. The election appointment year begins on
8 July 15th. As soon as those appointments come in, the poll
9 worker, prospective poll workers are assigned to the training
10 classes. We have to get that done. And the last training
11 class I believe, as of now, is scheduled for the Friday before
12 the primary. Because when initially it was scheduled for
13 September 11th, so we ended it the Friday, I believe it's the
14 7th. And the reason being is that at that point you need to at
15 least make the assignments, get the people out there. You
16 really just can't tell them the night before this is where
17 you're going. And they have to take the test, we have to
18 grade, then make sure they pass them as well. So the idea that
19 we're going to begin training -- the other part is there will
20 be very limited training only for replacement poll workers, new
21 poll workers between September 13th and November 6th. The
22 election year, the cycle begins on July 15th. The law requires
23 them to be trained once a cycle, and the time to do that has
24 been running now. As we speak now, the training is ongoing for
25 this election cycle. And again we have enough problems trying

C8RZUNI2

1 to get people to show up and go to the training, because there
2 it is a six hour course. It is not the most scintillating
3 information to be shared. But I think it's important because
4 we have certain responsibilities. And the emphasis has been on
5 meeting our legal obligations, including the rights of persons
6 with disabilities to vote in an unimpeded manner.

7 So, your Honor, I don't know how, between now and
8 November, what else CIDNY can do at this point, other than what
9 they've done in terms of getting us prepared for this year.

10 MR. SEABORN: Your Honor, if I could respond to that.
11 It's just about opening themselves up to meeting with CIDNY to
12 finding out what CIDNY can, indeed, do for them. This
13 engagement, I like the fact that the Board of Elections has
14 used the term engagement. CIDNY's been engaged on the Board
15 since 2003, and we are where we are today and because of it.
16 So I think there need to be something a little bit more formal.
17 We recognize there may be some openness now, but there needs to
18 be some sort of formalization of relationship so when CIDNY --
19 they could sit down and say we have the capacity to train X
20 amount of people in X boroughs between now and November. They
21 need to share that information back and forth. But without
22 having some sort of formalization of the relationship saying,
23 something from the Court saying, Board of Elections, you need
24 to work with CIDNY to do this, we're not going to get there.

25 THE COURT: You mean, there's been less than cordial

C8RZUNI2

1 and collegial correspondence between the plaintiffs and the
2 defendants?

3 MR. SEABORN: The correspondence has been just fine in
4 terms of being cordial. There's been people attending
5 meetings, they've had contact back and forth.

6 In terms of actually doing something when complaints
7 are made, when CIDNY raises an issue, it's really the Board's
8 decision and nothing else. So we want something that there's
9 openness --

10 THE COURT: You want teeth.

11 MR. SEABORN: Yes, exactly; something where the voice
12 is heard and CIDNY has a say.

13 MR. KITZINGER: Your Honor, I can't begin to express
14 how inappropriate I think that would be. CIDNY is a contractor
15 that has designations with State Board of Elections, contractor
16 with the City Board of Election. And to give them oversight
17 authority over their principal would seem to be highly
18 inappropriate.

19 THE COURT: It would be unusual, I'd certainly say
20 that.

21 MR. KITZINGER: Yeah. It's -- I just don't even know
22 how to properly express it, because it's such an unusual
23 suggestion to bring in -- to, basically, take something that's
24 been contracted to do a job, has been doing it, someone else
25 complains that the job isn't being done sufficiently, and then

C8RZUNI2

1 to give them additional authority over the principal, just
2 seems to me to be, at best, inappropriate, and at worst, create
3 a conflict.

4 MR. SEABORN: Your Honor, just to be clear, we're not
5 asking for CIDNY to have oversight over any of its process.
6 The Court has oversight in our plan. We're asking for either a
7 third party, special master or magistrate to have the
8 oversight. It's just having a voice, having -- you know, we
9 could have a series of meetings and the parties could report
10 back to the Court. In our long term plan, we've actually had
11 an idea to get a third-party expert, somebody like Michael
12 Waterstone out in California, or somebody here in New York.

13 THE COURT: You know, California and New York are
14 pretty far apart, and they also have attitudinal differences.
15 So if we're going to go that route, it probably would be long
16 term somebody from the New York area.

17 But, you know, I understand what Mr. Kitzinger is
18 saying, I understand what Mr. Seaborn is saying, and I
19 understand that this problem is before me. And I am just
20 trying to devise a way of facilitating the obligations of the
21 Board of Elections in this area, knowing that you have other
22 obligations in other areas in a way that is, bottom line, going
23 to increase and guarantee the ability of the disabled to vote.
24 And it's not -- I mean, it's such a unique situation. How many
25 times a year do you go to the polls?

C8RZUNI2

1 MR. KITZINGER: This year --

2 MR. RICHMAN: Four times, your Honor.

3 MR. KITZINGER: This year we have four elections.

4 But, yes, we understand the problem. The Board has
5 taken great -- is making great efforts to ensure that everyone
6 has the ability to vote. And things will come up. We will
7 have bad weather. We will have power failures. We will have
8 devices that fail on election day. When you're conducting this
9 many simultaneous events, it will happen. The Board is making
10 every effort it can to minimize these disruptions. And that
11 includes resurveying every site, finding many new sites, making
12 changes to sites. For example, where schools have had double
13 doors -- I don't know the technical term for it -- but we have
14 two doors in the hallway with the bar in the middle, they're
15 ripping those out, reinforcing the top and putting two doors
16 together without the bar in the middle so it's now wide enough,
17 because those doors were 32 inches and you have to have 36
18 inches clearance.

19 The Board is spending money to make improvements to
20 properties it doesn't own. And it's very -- we all know in
21 this day and age there is limited resources. But the Board is
22 prioritizing the resource it has to get the most bang for its
23 buck, including making sites accessible that are used by the
24 public on a daily basis that are also used for poll sites such
25 as the schools. Because that benefits everybody by making the

C8RZUNI2

1 poll sites accessible -- not just the voters who get an
2 accessible site, but the students, the parents of the students,
3 the teachers, they now have an additional accessible facility.

4 THE COURT: All that admirable.

5 This is what I'm going to do. It is 12:20. I am
6 going to have the parties talk to each other, exchange
7 information so that you have a better idea of what each person
8 wishes to do, short-term, for November. It may be that with
9 the information, that the new information the defendants have
10 to share with the plaintiffs, that some of the concerns may be
11 alleviated, some of them may not. But because Mr. Kitzinger is
12 only available today, I want to use the remainder of the day
13 for this open discussion among the parties so that when Mr.
14 Kitzinger is back from vacation, which will be when?

15 MR. KITZINGER: The day after Labor Day, that Tuesday.
16 I think it is September 4, your Honor.

17 THE COURT: We're going to reconvene on Monday,
18 September 10th, 11:00 a.m.

19 MR. KITZINGER: Your Honor, did you say 11:00?

20 THE COURT: 11:00 a.m.

21 MR. KITZINGER: Thank you.

22 THE COURT: So that gives you not only the remainder
23 of the day, but additional days the week of the 4th to get
24 together and talk and work out things that are helpful, with
25 open minds, with full knowledge of what each could do, with

C8RZUNI2

1 full knowledge much how each can help, so that when you appear
2 before me on the 10th, I will be in a better position to know
3 whether or not some more formal relationship imposed by the
4 Court is the only alternative. All right?

5 MR. KITZINGER: Thank you, your Honor.

6 THE COURT: All right.

7 You can actually use my courtroom.

8 This matter is adjourned.

9 (Adjourned to September 10, 2012 at 11:00 a.m.)